

AMENDED IN SENATE MARCH 29, 2006

SENATE BILL

No. 1800

Introduced by Senators Ducheny and Cedillo

February 24, 2006

An act to amend Sections 65300, 65302, 65582, 65583, 65583.2, 65584, 65584.01, 65584.02, 65584.04, and 65584.07 of, to add Sections 16318, 16319, 16319.5, and 65300.1 to, to add Article 9 (commencing with Section 65470) to Chapter 3 of Division 1 of Title 7 of, and to repeal and add Section 65588 of, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1800, as amended, Ducheny. General plans: housing.

Existing law requires each planning agency to prepare, and the legislative body of each county and city to adopt, a comprehensive, long-term general plan for the physical development of the county or city. The general plan consists of various elements, including a housing element. The housing element consists, in part, of an identification and analysis of existing and projected housing needs in the community and the community's share of regional housing needs, and is to be periodically revised.

This bill would require the legislative body of a local agency, as defined, to adopt the general plan, would define the term "long-term," with respect to the general plan, and would require the local government at the same time it revises its housing element to adopt a housing opportunity plan, as described, as a part of the housing element, thereby imposing a state-mandated local program. The bill would establish the Housing Opportunity Plan Fund, to be administered by the Pooled Money Investment Board. Upon

appropriation by the Legislature, moneys in the fund shall be used for the purpose of providing loans from the Pooled Money Investment Account to cities, counties, and cities and counties to prepare and adopt plans that provide housing pursuant to the housing opportunity plans. The bill would revise procedures for the adoption of local and regional housing needs, and would make related and conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16318 is added to the Government
2 Code, to read:

3 16318. There is hereby established in the State Treasury the
4 Housing Opportunity Plan Revolving Fund, to be administered
5 by the Pooled Money Investment Board. Upon appropriation by
6 the Legislature, moneys in the fund shall be used for the purpose
7 of providing loans on any terms and conditions as the board may
8 determine, from the Pooled Money Investment Account to cities,
9 counties, and cities and counties to prepare and adopt plans that
10 provide for housing pursuant to Article 9 (commencing with
11 Section 65470) of Chapter 3 of Division 1 of Title 7.

12 SEC. 2. Section 16319 is added to the Government Code, to
13 read:

14 16319. To be eligible for a loan from the Housing
15 Opportunity Plan Revolving Fund the city, county, or city and
16 county shall submit to the Department of Housing and
17 Community Development the annual report required by Section
18 65400 within the preceding 12 months.

SEC. 3. Section 16319.5 is added to the Government Code, to read:

16319.5. (a) Loans made from the Housing Opportunity Plan Revolving Fund shall not exceed ____ (\$____) and shall be for a term of not more than 10 years. It is the intent of the Legislature that the loans be repaid primarily by a fee collected at the time of the issuance of a permit for new residential construction. *Notwithstanding any other provision of law, any fee collected pursuant to this section shall be subject to Section 66020. It is the intention of the Legislature that the fee shall be in an amount that will fund the incremental costs of complying with the requirements imposed by Senate Bill No. 1800 of the 2005–06 Regular Session of the Legislature amending this section.* The board in its sole discretion, may extend the term of the loan upon a finding of undue hardship.

(b) A loan from the Housing Opportunity Plan Revolving Fund shall incur 3 percent simple interest. If the Housing Opportunity Plan (Article 9 (commencing with Section 65470) of Chapter 3 of Division 1 of Title 7) is not adopted within two years of the date established in the loan agreement, the interest rate shall be recalculated from the initial closing date of the loan agreement at 6 percent simple interest.

(c) Loan funds may be used for staff costs, or the cost of a consulting contract, to process the Housing Opportunity Plan (Article 9 (commencing with Section 65470) of Chapter 3 of Division 1 of Title 7), conduct environmental assessments or other necessary studies, and provide for public participation outside of regularly scheduled meetings of established governing bodies, including a planning commission, city council, or board of supervisors.

SEC. 4. Section 65300 of the Government Code is amended to read:

65300. (a) Each planning agency shall prepare, and the legislative body of each local government shall adopt, a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries that in the planning agency's judgment bears relation to its planning. Chartered cities shall adopt general plans that contain the mandatory elements specified in Section 65302. "Long-term," as used in this section, means that the general plan,

1 including all of its functional elements, shall encompass a
2 planning and projection period of not less than 20 years.
3 “Comprehensive,” as used in this section and Section 65302,
4 shall mean that the population and employment projections of all
5 of the functional elements of the general plan are consistent with
6 each other and are periodically updated not less than every 10
7 years.

8 (b) “Local government,” as used in this chapter and in Chapter
9 4 (commencing with Section 65800), means a city, county, or
10 city and county.

11 (c) As used in Section 65584, “taking care of their own” or
12 “taking care of its own” shall mean that each local government
13 shall have an obligation to at least plan to accommodate their
14 own natural population increases and job generation for the full
15 spectrum of the population, including very low and low-income
16 households and workers as determined pursuant to Section 65584
17 and Section 65584.01.

18 SEC. 5. Section 65300.1 is added to the Government Code, to
19 read:

20 65300.1. The Legislature finds and declares all of the
21 following:

22 (a) The lack of housing is a critical problem that threatens the
23 economic prosperity, environment, and quality of life of
24 California families.

25 (b) The supply and cost of housing throughout the state is
26 inextricably linked to the quantity of land suitable and available
27 for residential development. In order to comprehensively address
28 the housing crisis on a long-term basis, local governments must
29 ensure the availability of sufficient sites to accommodate their
30 20-year projected need for new housing.

31 (c) Local governments shall utilize their land use authority in
32 a manner that accommodates the long-term housing need while
33 meeting the objectives for comprehensive planning set forth in
34 subdivision (a) of Section 65300.

35 (d) Accommodating long-term housing needs while meeting
36 the objectives for comprehensive planning set forth in
37 subdivision (a) of Section 65300 serves to advance the following
38 objectives for a prosperous economy, a quality environment, and
39 social equity:

1 (1) An adequate supply of housing and transportation
2 infrastructure to support population growth and economic
3 expansion.

4 (2) A mix of housing in proximity to employment centers.

5 (3) A mix of housing types for all economic segments within
6 each community.

7 (4) Construction of housing at densities that reflect an efficient
8 use of the land and an effective use of public subsidies to achieve
9 affordable housing to very low, low-, and moderate-income
10 households.

11 (5) Promotion of opportunities and regulatory certainty for
12 development of infill or refill sites on vacant or underutilized
13 land, and brownfield sites.

14 (6) Efficient development patterns and promotion of greater
15 public use of alternative modes of transportation.

16 (7) Minimization of development pressures on prime
17 agricultural land, as defined in subdivision (c) of Section 51201.

18 (8) Protection of wildlife habitat pursuant to federal or state
19 law.

20 SEC. 6. Section 65302 of the Government Code is amended
21 to read:

22 65302. The general plan shall consist of a statement of
23 development policies and shall include a diagram or diagrams
24 and text setting forth objectives, principles, standards, and plan
25 proposals. The plan shall include the following elements:

26 (a) A land use element that designates the proposed general
27 distribution and general location and extent of the uses of the
28 land for housing, business, industry, open space, including
29 agriculture, natural resources, recreation, and enjoyment of
30 scenic beauty, education, public buildings and grounds, solid and
31 liquid waste disposal facilities, and other categories of public and
32 private uses of land. The land use element shall include a
33 statement of the standards of population density and building
34 intensity recommended for the various districts and other
35 territory covered by the plan. The land use element shall identify
36 areas covered by the plan that are subject to flooding and shall be
37 reviewed annually with respect to those areas. The land use
38 element shall also do ~~both~~ *each* of the following:

39 (1) Designate sufficient land for residential use to meet the
40 regional housing need consistent with Sections 65583, 65583.2,

1 65584, and 65584.01. At least every 10 years the city council or
2 board of supervisors shall review this part of the land use element
3 and shall make any necessary amendments to ensure that there
4 continues to be designated a 20-year supply of land for
5 residential use.

6 (2) Designate in a land use category that provides for timber
7 production those parcels of real property zoned for timberland
8 production pursuant to the California Timberland Productivity
9 Act of 1982 (Chapter 6.7 (commencing with Section 51100) of
10 Part 1 of Division 1 of Title 5).

11 (3) Consider the impact of new growth on military readiness
12 activities carried out on military bases, installations, and
13 operating and training areas, when proposing zoning ordinances
14 or designating land uses covered by the general plan for land, or
15 other territory adjacent to military facilities, or underlying
16 designated military aviation routes and airspace.

17 (A) In determining the impact of new growth on military
18 readiness activities, information provided by military facilities
19 shall be considered. Cities and counties shall address military
20 impacts based on information from the military and other
21 sources.

22 (B) The following definitions govern this paragraph:

23 (i) “Military readiness activities” mean all of the following:

24 (I) Training, support, and operations that prepare the men and
25 women of the military for combat.

26 (II) Operation, maintenance, and security of any military
27 installation.

28 (III) Testing of military equipment, vehicles, weapons, and
29 sensors for proper operation or suitability for combat use.

30 (ii) “Military installation” means a base, camp, post, station,
31 yard, center, homeport facility for any ship, or other activity
32 under the jurisdiction of the United States Department of
33 Defense, as defined in paragraph (1) of subsection (e) of Section
34 2687 of Title 10 of the United States Code.

35 (b) A circulation element consisting of the general location
36 and extent of existing and proposed major thoroughfares,
37 transportation routes, terminals, any military airports and ports,
38 and other local public utilities and facilities, all correlated with
39 the land use element of the plan.

1 (c) A housing element, as provided in Article 10.6
2 (commencing with Section 65580).

3 (d) A conservation element for the conservation, development,
4 and utilization of natural resources, including water and its
5 hydraulic force, forests, soils, rivers and other waters, harbors,
6 fisheries, wildlife, minerals, and other natural resources. The
7 conservation element shall consider the effect of development
8 within the jurisdiction, as described in the land use element, on
9 natural resources located on public lands, including military
10 installations. That portion of the conservation element, including
11 waters, shall be developed in coordination with any countywide
12 water agency and with all district and city agencies that have
13 developed, served, controlled, or conserved water for any
14 purpose for the county or city for which the plan is prepared.
15 Coordination shall include the discussion and evaluation of any
16 water supply and demand information described in Section
17 65352.5, if that information has been submitted by the water
18 agency to the city or county. The conservation element may also
19 cover the following:

- 20 (1) The reclamation of land and waters.
- 21 (2) Prevention and control of the pollution of streams and
22 other waters.
- 23 (3) Regulation of the use of land in stream channels and other
24 areas required for the accomplishment of the conservation plan.
- 25 (4) Prevention, control, and correction of the erosion of soils,
26 beaches, and shores.
- 27 (5) Protection of watersheds.
- 28 (6) The location, quantity, and quality of the rock, sand, and
29 gravel resources.
- 30 (7) Flood control.

31 The conservation element shall be prepared and adopted no
32 later than December 31, 1973.

33 (e) An open-space element, as provided in Article 10.5
34 (commencing with Section 65560).

35 (f) A noise element that shall identify and appraise noise
36 problems in the community. The noise element shall recognize
37 the guidelines established by the Office of Noise Control in the
38 State Department of Health Services and shall analyze and
39 quantify, to the extent practicable, as determined by the

1 legislative body, current and projected noise levels for all of the
2 following sources:

3 (1) Highways and freeways.

4 (2) Primary arterials and major local streets.

5 (3) Passenger and freight on-line railroad operations and
6 ground rapid transit systems.

7 (4) Commercial, general aviation, heliport, helistop, and
8 military airport operations, aircraft overflights, jet engine test
9 stands, and all other ground facilities and maintenance functions
10 related to airport operation.

11 (5) Local industrial plants, including, but not limited to,
12 railroad classification yards.

13 (6) Other ground stationary noise sources, including, but not
14 limited to, military installations, identified by local agencies as
15 contributing to the community noise environment.

16 Noise contours shall be shown for all of these sources and
17 stated in terms of community noise equivalent level (CNEL) or
18 day-night average level (L_{dn}). The noise contours shall be
19 prepared on the basis of noise monitoring or following generally
20 accepted noise modeling techniques for the various sources
21 identified in paragraphs (1) to (6), inclusive.

22 The noise contours shall be used as a guide for establishing a
23 pattern of land uses in the land use element that minimizes the
24 exposure of community residents to excessive noise.

25 The noise element shall include implementation measures and
26 possible solutions that address existing and foreseeable noise
27 problems, if any. The adopted noise element shall serve as a
28 guideline for compliance with the state's noise insulation
29 standards.

30 (g) A safety element for the protection of the community from
31 any unreasonable risks associated with the effects of seismically
32 induced surface rupture, ground shaking, ground failure, tsunami,
33 seiche, and dam failure; slope instability leading to mudslides
34 and landslides; subsidence, liquefaction, and other seismic
35 hazards identified pursuant to Chapter 7.8 (commencing with
36 Section 2690) of the Public Resources Code, and other geologic
37 hazards known to the legislative body; flooding; and wild land
38 and urban fires. The safety element shall include mapping of
39 known seismic and other geologic hazards. It shall also address
40 evacuation routes, military installations, peakload water supply

1 requirements, and minimum road widths and clearances around
2 structures, as those items relate to identified fire and geologic
3 hazards.

4 (1) Prior to the periodic review of its general plan and prior to
5 preparing or revising its safety element, each city and county
6 shall consult the Division of Mines and Geology of the
7 Department of Conservation and the Office of Emergency
8 Services for the purpose of including information known by, and
9 available to, the department and the office required by this
10 subdivision.

11 (2) To the extent that a county's safety element is sufficiently
12 detailed and contains appropriate policies and programs for
13 adoption by a city, a city may adopt that portion of the county's
14 safety element that pertains to the city's planning area in
15 satisfaction of the requirement imposed by this subdivision.

16 SEC. 7. Article 9 (commencing with Section 65470) is added
17 to Chapter 3 of Division 1 of Title 7 of the Government Code, to
18 read:

19
20 Article 9. Housing Opportunity Plans
21

22 65470. At the same time the local government revises its
23 housing element pursuant to subdivision (c) of Section 65588,
24 each city council and board of supervisors shall adopt a housing
25 opportunity plan as part of the housing element.

26 65471. (a) The housing opportunity plan shall, upon
27 adoption, do all of the following:

28 (1) Include a map or other description outlining the area or
29 areas covered by the plan.

30 (2) Include a land use program that includes the distribution,
31 location, and extent of uses of the land within the area covered by
32 the plan.

33 (3) From the sites identified pursuant to subdivision (a) of
34 Section 65583.2, designate and zone adequate sites for residential
35 use to accommodate the jurisdiction's 10-year housing need
36 allocated pursuant to Sections 65584 and 65584.01 (housing
37 opportunity sites). The local government's obligation to zone
38 adequate sites to accommodate its share of the region's 10-year
39 housing need for very low, low-, and moderate-income
40 households shall be satisfied by zoning sites to allow the

1 specified minimum number of units per acre, as identified in
2 subdivision (d) of Section 65583.2. Residential use on a site ~~zone~~
3 ~~zoned~~ to allow a specified minimum number of units per acre, as
4 identified in subdivision (d) of Section 65583.2, shall be by right,
5 as defined in subdivision ~~(j)~~ (h) of Section 65583.2.

6 (A) The designation and zoning for a housing opportunity site
7 shall establish and allow development of a minimum and
8 maximum density range.

9 (B) The city council or board of supervisors shall make a
10 finding, supported by substantial evidence in the record, that each
11 housing opportunity site is adequate for construction of the
12 *maximum* number of units allowed by the density range
13 applicable to the site. A finding of adequacy shall be based on a
14 showing that the site is appropriate in terms of size,
15 configuration, physical characteristics, current use, physical and
16 environmental constraints, access, location, adjacent use, market
17 factors, current or planned availability of infrastructure and
18 services, and other relevant planning criteria.

19 (4) Include residential design and landscape architecture
20 guidelines that permit the construction of the maximum number
21 of units allowed by the density range applicable to the housing
22 opportunity site.

23 (5) ~~Show~~ *Include an infrastructure plan that shows* the
24 proposed distribution, location, extent, and intensity of the major
25 components of the public and private transportation, sewage,
26 water, drainage, solid waste disposal, energy, and other essential
27 facilities and services proposed to be located within the area
28 covered by the plan and needed to support the land uses
29 described in the plan.

30 (6) Describe how the construction and maintenance of public
31 infrastructure and the provision of public services identified in
32 paragraph (5) will be funded.

33 (7) Include a program of implementation measures including
34 property development standards, regulations, criteria, and other
35 measures necessary to carry out the plan. The implementation
36 measures shall permit the construction of the maximum number
37 of units allowed by the density range applicable to the housing
38 opportunity site.

39 (8) Include standards for the conservation, development, and
40 utilization of natural resources, where applicable.

1 ~~(b) A housing opportunity plan may include the information~~
2 ~~required by this section on an areawide or site-specific basis.~~

3 *(b) A housing opportunity plan may apply the design and*
4 *architecture guidelines and implementation measures, including*
5 *property development standards, regulations, criteria, and other*
6 *measures necessary to carry out the plan, on an areawide or*
7 *site-specific basis.*

8 (c) The housing opportunity plan may address any other
9 subjects that in the judgment of the planning agency are
10 necessary or desirable for implementation of the plan.

11 *(d) Not later than five years after the initial adoption of the*
12 *housing opportunity plan, and every five years thereafter, the city*
13 *council or board of supervisors shall complete a review and*
14 *update of the housing opportunity plan. As part of the five-year*
15 *review, the city council or board of supervisors shall make any*
16 *necessary amendments to ensure that the housing opportunity*
17 *plan complies with the requirements of this section, including*
18 *amendments and findings of adequacy to ensure that the housing*
19 *opportunity plan designates and zones at a minimum adequate*
20 *sites for residential use to accommodate the jurisdiction's*
21 *housing need for the next 10-year period allocated to the*
22 *jurisdiction by the council of governments.*

23 65472. (a) In addition to the notice and hearing requirements
24 that apply to the adoption of a mandatory element of a general
25 plan, when a jurisdiction adopts its initial housing opportunity
26 plan and when it adopts a major amendment as part of a five-year
27 review, it shall follow these procedures:

28 (1) On or before six months prior to the first planning
29 commission hearing, a statement of preparation shall be
30 published in a newspaper of general circulation, mailed to all
31 property owners whose property is proposed for inclusion in the
32 housing opportunity plan, all property owners living within 500
33 feet of the boundaries of the housing opportunity plan, all
34 homeowners associations within the boundaries of the housing
35 opportunity plan, and all persons requesting notice of the
36 planning actions of the jurisdiction.

37 (2) The legislative body shall appoint a community advisory
38 committee to provide citizen input. The legislative body shall, by
39 resolution, adopt a procedure for the formation of the community

1 advisory committee. The procedure shall include all of the
2 following:

3 (A) Publishing notice in a newspaper of general circulation of
4 the opportunity to serve on the community advisory committee at
5 least 30 days prior to the formation of the community advisory
6 committee. The legislative body shall make a diligent effort to
7 achieve public participation of all economic segments of the
8 community in the development of the housing opportunity plan.

9 (B) The legislative body shall conduct a minimum of one
10 public meeting to explain the establishment of, functions of, and
11 opportunity to service on, the community advisory committee.

12 (3) One or more community forums shall be held. Notice shall
13 be provided to all persons attending the community forums of
14 subsequent consideration of the plan.

15 (4) Compliance with the referral requirements of Section
16 65352.

17 (b) Within 30 days after adoption, the jurisdiction shall mail
18 notice to all property owners of lands within one-quarter mile of
19 the exterior boundary of each area included within the plan. The
20 jurisdiction shall adopt a local disclosure statement that requires
21 all purchasers of land within one-quarter mile of the exterior
22 boundary of each area included within the plan to be notified of
23 the plan and how to obtain a copy of the plan.

24 (c) For purposes of this article, “major amendment” means an
25 amendment that changes the permitted uses or intensity of uses
26 applicable to a site within the plan, removes a site from the plan,
27 or adds a site to the plan.

28 ~~65474.~~

29 ~~65473.~~ (a) Any approval sought in connection with a
30 residential project that is consistent with the housing opportunity
31 plan shall be subject to the Permit Streamlining Act (Chapter 4.5
32 (commencing with Section 65920) of Division 1 of Title 7). For
33 purposes of this section, a residential project is consistent with
34 the housing opportunity plan if it substantially conforms to the
35 housing opportunity plan as determined by the legislative body of
36 the city or county.

37 (b) (1) Any approval sought in connection with a residential
38 project that is consistent with the housing opportunity plan may
39 not be denied or conditioned on reducing the residential project’s
40 density below that proposed by the applicant unless by four-fifths

1 vote the legislative body makes written findings pursuant to
2 subdivision (j) of Section 65589.5. For purposes of this section
3 ~~and Section 65475~~, an abstention may not count as an affirmative
4 vote for purposes of satisfying the four-fifths vote requirement.

5 (2) An action or proceeding by a project applicant alleging that
6 the legislative body has denied or conditioned a residential
7 project in violation of this subdivision shall be commenced and
8 the public agency served within 60 days of the public agency's
9 decision. If the plaintiff is the prevailing party it shall be awarded
10 attorney's fees if the court determines that the legislative body
11 acted in bad faith.

12 (3) Nothing in this subdivision shall preclude the local
13 jurisdiction from imposing an otherwise lawful condition,
14 including the payment of fees, on the residential project.

15 (c) (1) Any residential project that is undertaken to implement
16 and is consistent with a housing opportunity plan for which an
17 environmental impact report has been certified is exempt from
18 the requirements of the California Environmental Quality Act
19 (Division 13 (commencing with Section 21000) of the Public
20 Resources Code). However, if after adoption of the housing
21 opportunity plan, an event as specified in Section 21166 of the
22 Public Resources Code occurs, the exemption provided by this
23 subdivision does not apply unless and until a supplemental
24 environmental impact report for the housing opportunity plan is
25 prepared and certified in accordance with Division 13
26 (commencing with Section 21000) of the Public Resources Code.
27 After a supplemental environmental impact report is certified, the
28 exemption specified in this subdivision applies to residential
29 projects undertaken pursuant to the housing opportunity plan.

30 (2) An action or proceeding alleging that a public agency has
31 approved a residential project pursuant to a housing opportunity
32 plan without having previously certified a supplemental
33 environmental impact report for the housing opportunity plan,
34 where required by paragraph (1), shall be commenced and the
35 public agency served within 30 days of the public agency's
36 decision to approve the residential project.

37 (d) An action challenging a public agency's decision to
38 approve a residential project within the housing opportunity plan
39 on the basis that the residential project is inconsistent with the
40 housing opportunity plan shall be commenced and service made

1 on the public agency within 30 days of the public agency's
2 decision to approve the residential project.

3 (e) For purposes of this section, "residential project" includes
4 a mixed-use development consisting of residential and
5 nonresidential uses in which nonresidential uses are limited to
6 neighborhood commercial uses and to the first floor of buildings
7 that are two or more stories if the nonresidential uses are
8 approved by the local agency in accordance with its review
9 process for mixed-use development. For purposes of this
10 subdivision, "neighborhood commercial" means small-scale
11 general or specialty stores that furnish goods or services
12 primarily to residents of the neighborhood.

13 (f) (1) Except as provided in paragraph (2), for the first five
14 years that a site is within the housing opportunity plan, the
15 provisions of the housing opportunity plan applicable to that site
16 may not be amended except by a four-fifths vote of the
17 legislative body after making written findings pursuant to
18 subdivision (j) of Section 65589.5. If the amendment would
19 result in the housing opportunity plan not containing adequate
20 sites to accommodate the 10-year housing need requirement, the
21 jurisdiction shall add adequate sites to the housing opportunity
22 plan so that there is no net loss of residential density. An action
23 or proceeding alleging that the legislative body has amended the
24 housing opportunity plan in violation of this paragraph shall be
25 commenced, and the public agency served, within 60 days. If the
26 plaintiff is the prevailing party, it shall be awarded attorney's
27 fees if the court determines that the legislative body acted in bad
28 faith.

29 (2) At any time, the owner of a site within the housing
30 opportunity plan or a project applicant may request an
31 amendment to the plan. When a property owner or project
32 applicant requests an amendment to the plan, the city council or
33 board of supervisors has discretion to approve or deny the
34 amendment by majority vote without making a health and safety
35 finding, subject to compliance with paragraph (3), *or as may be*
36 *limited or prohibited by another provision of law, such as the*
37 *existence of a development agreement or vesting tentative map.*

38 (3) If the proposed amendment requests a reduction in density
39 below the established minimum density for a site within the
40 housing opportunity plan and would result in the remaining sites

1 not being adequate to accommodate the 10-year housing need
2 requirement, the jurisdiction may reduce the density below the
3 established minimum density on that site if it adds adequate sites
4 to the housing opportunity plan so that there is no net loss of
5 residential density.

6 (g) (1) Except as provided in paragraph (2), or as may be
7 limited or prohibited by another provision of law such as the
8 existence of a development agreement or vesting tentative map,
9 after a site has been in the housing opportunity plan for more
10 than five years, the provisions of the plan applicable to that site
11 may be amended by majority vote of the legislative body and
12 without making a health and safety ~~finding, subject to~~
13 ~~compliance with paragraph (4) of subdivision (b).~~ *finding. If the*
14 *amendment would result in the remaining sites not being*
15 *adequate to accommodate the 10-year housing need requirement,*
16 *the jurisdiction shall add adequate sites to the housing*
17 *opportunity plan so that there is no net loss of residential density.*

18 (2) When a complete application has been submitted to
19 develop a residential project, or a project applicant has submitted
20 a letter of intent to develop a residential project, within the
21 housing opportunity plan to the local jurisdiction and expended
22 the amount specified in Section 66452.6 in preproject
23 expenditures, those parts of the plan applicable to the residential
24 project may not be amended except by four-fifths vote of the
25 legislative body after making written findings pursuant to
26 subdivision (j) of Section 65589.5. A letter of intent to develop
27 shall cease to have effect under this paragraph if a project
28 application is not submitted within three years after the letter of
29 intent is filed.

30 (3) An action or proceeding alleging that the legislative body
31 has amended the housing opportunity plan in violation of
32 paragraph (2) shall be commenced, and the public agency served,
33 within 60 days of the public agency's decision. If the plaintiff is
34 the prevailing party, it shall be awarded attorney's fees if the
35 court determines that the legislative body acted in bad faith.

36 ~~65477.~~

37 ~~65474.~~ A housing opportunity plan may not be subject to
38 review and certification by the Department of Housing and
39 Community Development pursuant to Section 65585.

1 ~~65478.~~

2 65475. (a) Each local jurisdiction shall send a copy of its
3 adopted housing opportunity plan and all subsequent
4 amendments to the council of governments. If the council of
5 governments has not received a jurisdiction's housing
6 opportunity plan within 30 days of the date required for plan
7 adoption, or an amendment required as part of a five-year review
8 within 30 days of the date required for plan revision, the council
9 of governments shall immediately notify the Attorney General
10 and the Controller.

11 (b) (1) When a local jurisdiction fails to adopt the housing
12 opportunity plan by the required deadline, or fails to adopt an
13 amendment required as part of a five-year review by the required
14 deadline, at any time before the local jurisdiction adopts the plan
15 or amendment, the Attorney General or any person may bring an
16 action to require adoption of the plan or amendment. If the court
17 finds in the plaintiff or petitioner's favor, it shall promptly issue
18 an order requiring the jurisdiction to adopt the plan or
19 amendment within 90 days of the date of the order.

20 (2) If the action is brought more than 90 days after the
21 deadline and the court finds in the plaintiff or petitioner's favor,
22 the court order shall also appoint a special master to oversee the
23 adoption of the plan or amendment by the jurisdiction. The order
24 shall provide the special master with the authority to establish
25 progress deadlines within the 90-day period described in
26 paragraph (1) and shall provide that a jurisdiction's failure to
27 meet a deadline shall result in a fine of ten thousand dollars
28 (\$10,000) per day for each day the deadline is missed. Fines shall
29 not be paid from any funds that are collected or dedicated for
30 affordable housing. Fines shall be transferred to the council of
31 governments and made available for expenditure on affordable
32 housing projects within the region. The court's order shall also
33 authorize the special master to oversee the review and approval
34 of residential projects.

35 (3) If the plaintiff or petitioner is the prevailing party, it shall
36 be awarded attorney's fees.

37 ~~65479.~~

38 65476. If a court finds that the housing opportunity plan is
39 not in substantial compliance with the requirements of this
40 article, the court shall retain jurisdiction of the action and issue

1 an order to the jurisdiction to revise the plan for further review
2 by the court within 120 days or a lesser period if the court
3 determines that a lesser period is appropriate. If the court
4 determines that the revised housing opportunity plan is not in
5 substantial compliance with the requirements of this article, the
6 following shall apply:

7 (a) The court may impose fines of up to ten thousand dollars
8 (\$10,000) per day. Fines shall not be paid from any funds that are
9 collected or dedicated for affordable housing. Fines shall be
10 transferred to the council of governments for expenditure on
11 affordable housing projects within the region.

12 (b) The court shall order the second revised housing
13 opportunity plan to be adopted within 60 days of the
14 determination that the revised housing opportunity plan is not in
15 substantial compliance with the requirements of this article and
16 shall appoint a special master to oversee the adoption by the
17 jurisdiction of the second revised housing opportunity plan. The
18 court's order shall provide the special master with the authority
19 to establish deadlines and shall provide that a jurisdiction's
20 failure to meet a deadline shall result in a fine of ten thousand
21 dollars (\$10,000) per day for each day the deadline is missed.
22 Fines shall not be paid from any funds that are collected or
23 dedicated for affordable housing. Fines shall be transferred to the
24 council of governments for expenditure on affordable housing
25 projects within the region. The court's order shall also authorize
26 the special master to oversee the review and approval of
27 residential projects.

28 ~~65480.~~

29 ~~65477.~~ An action or proceeding brought pursuant to this
30 article shall have precedence over all other civil actions and
31 proceedings in the same manner and to the same extent as
32 provided in subdivision (a) of Section 21167.1 of the Public
33 Resources Code.

34 ~~65481.~~

35 ~~65478.~~ All deadlines specified in this article are mandatory,
36 not directory.

37 SEC. 8. Section 65582 of the Government Code is amended
38 to read:

1 65582. As used in this article and in Article 9 (commencing
2 with Section 65470), the following terms have the following
3 meanings:

4 (a) “Community,” “locality,” “local government,” or
5 “jurisdiction” means a city, city and county, or county, whether
6 general law or chartered.

7 (b) “Council of governments” means a single or multicounty
8 council created by a joint powers agreement pursuant to Chapter
9 5 (commencing with Section 6500) of Division 1 of Title 1.

10 (c) “Department” means the Department of Housing and
11 Community Development.

12 (d) “Housing element” or “element” means the housing
13 element of the community’s general plan, as required pursuant to
14 this article and subdivision (c) of Section 65302.

15 (e) “Regional housing need” means the minimum amount of
16 housing that shall be accommodated by each local government
17 on appropriately designated land for a 20-year period including a
18 10-year projection of housing need to be accommodated in a
19 housing opportunity plan, as determined pursuant to Sections
20 65584 and 65584.01.

21 (f) “Very low, low-, and moderate-income households” means
22 persons and families of very low, low, or moderate incomes, as
23 defined by Section 50093 of the Health and Safety Code.

24 (g) As used in Section 65584, “taking care of their own” or
25 “taking care of its own” shall mean that each local government
26 shall have an obligation to at least plan to accommodate their
27 own natural population increases and job generation pursuant to
28 Sections 65584 and 65584.01.

29 SEC. 9. Section 65583 of the Government Code is amended
30 to read:

31 65583. The housing element shall consist of an identification
32 and analysis of existing and projected housing needs and a
33 statement of goals, policies, quantified objectives, financial
34 resources, and scheduled programs for the preservation,
35 improvement, and development of housing. The housing element
36 shall identify adequate sites for housing, including rental
37 housing, factory-built housing, and mobilehomes, and shall make
38 adequate provision for the existing and projected needs of all
39 economic segments of the community. The element shall contain
40 all of the following:

1 (a) A housing opportunity plan adopted pursuant to Article 9
2 (commencing with Section 65470).

3 (b) An assessment of housing needs and an inventory of
4 resources and constraints relevant to the meeting of these needs.
5 The assessment and inventory shall include all of the following:

6 (1) An analysis of population and employment trends and a
7 quantification of the locality's existing and projected housing
8 needs for all income levels. These existing and projected needs
9 shall include the locality's share of the regional housing need in
10 accordance with Section 65584 and Section 65584.01.

11 (2) An analysis and documentation of household
12 characteristics, including level of payment compared to ability to
13 pay, housing characteristics, including overcrowding, and
14 housing stock condition.

15 (3) An inventory of land suitable for residential development,
16 including vacant sites and sites having potential for
17 redevelopment, and an analysis of the relationship of zoning and
18 public facilities and services to these sites.

19 (4) An analysis of potential and actual governmental
20 constraints upon the maintenance, improvement, or development
21 of housing for all income levels and for persons with disabilities
22 as identified in the analysis pursuant to paragraph (6), including
23 land use controls, building codes and their enforcement, site
24 improvements, fees and other exactions required of developers,
25 and local processing and permit procedures. The analysis shall
26 also demonstrate local efforts to remove governmental
27 constraints that hinder the locality from meeting its share of the
28 regional housing need in accordance with Section 65584 and
29 from meeting the need for housing for persons with disabilities
30 identified pursuant to paragraph (5).

31 (5) An analysis of any special housing needs, such as those of
32 the elderly, persons with disabilities, large families, farmworkers,
33 families with female heads of households, and families and
34 persons in need of emergency shelter.

35 (6) An analysis of opportunities for energy conservation with
36 respect to residential development.

37 (7) An analysis of existing assisted housing developments that
38 are eligible to change from low-income housing uses during the
39 next 10 years due to termination of subsidy contracts, mortgage
40 prepayment, or expiration of restrictions on use. "Assisted

housing developments,” for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. “Assisted housing developments” shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality’s low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall identify public and private nonprofit corporations known to the local government that have legal and managerial capacity to acquire and manage these housing developments.

(c) (1) A statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing *for very low, low-, and moderate-income households, and for any special housing needs identified in paragraph (5) of subdivision (b).*

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community’s ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall ~~establish~~ *estimate* the maximum number of housing units ~~by income category~~ *for the categories identified in paragraph (1) that can be constructed, rehabilitated, and conserved over a five-year time period.*

(d) A program that sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to

1 implement the policies and achieve the goals and objectives of
2 the housing element through the administration of land use and
3 development controls, provision of regulatory concessions and
4 incentives, and the utilization of appropriate federal and state
5 financing and subsidy programs, when available, and the
6 utilization of moneys in a low- and moderate-income housing
7 fund of an agency if the locality has established a redevelopment
8 project area pursuant to the Community Redevelopment Law
9 (Division 24 (commencing with Section 33000) of the Health and
10 Safety Code). In order to make adequate provision for the
11 housing needs of all economic segments of the community, the
12 program shall do all of the following:

13 (1) (A) Identify sites to facilitate and encourage the
14 development of a variety of types of housing for all income
15 levels, including multifamily rental housing, factory-built
16 housing, manufactured homes, housing for agricultural
17 employees, emergency shelters, and transitional housing.

18 (B) Identify policies and incentives to promote infill
19 development and the efficient use of land, including, but not
20 limited to, expedited permit processing, modified development
21 standards, and fee waivers.

22 (C) When the inventory of sites pursuant to paragraph (3) of
23 subdivision (b) does not identify adequate sites to accommodate
24 the need for farmworker housing, the program shall provide for
25 sufficient sites to meet the need with zoning that permits
26 farmworker housing use by right, including density and
27 development standards that could accommodate and facilitate the
28 feasibility of the development of farmworker housing for low-
29 and very low income households.

30 (2) Assist in the development of adequate housing to meet the
31 needs of low- and moderate-income households.

32 (3) Address and, where appropriate and legally possible,
33 remove governmental constraints to the maintenance,
34 improvement, and development of housing, including housing for
35 all income levels and housing for persons with disabilities. The
36 program shall remove constraints to, or provide reasonable
37 accommodations for housing designed for, intended for
38 occupancy by, or with supportive services for, persons with
39 disabilities.

1 (4) Conserve and improve the condition of the existing
2 affordable housing stock, which may include addressing ways to
3 mitigate the loss of dwelling units demolished by public or
4 private action.

5 (5) Promote housing opportunities for all persons regardless of
6 race, religion, sex, marital status, ancestry, national origin, color,
7 familial status, or disability.

8 (6) Preserve for lower income households the assisted housing
9 developments identified pursuant to paragraph (7) of subdivision
10 (b).

11 (7) The program shall include an identification of the agencies
12 and officials responsible for the implementation of the various
13 actions and the means by which consistency will be achieved
14 with other general plan elements and community goals. The local
15 government shall make a diligent effort to achieve public
16 participation of all economic segments of the community in the
17 development of the housing element, and the program shall
18 describe this effort.

19 SEC. 10. Section 65583.2 of the Government Code is
20 amended to read:

21 65583.2. (a) A city's or county's inventory of land suitable
22 for residential development pursuant to paragraph (3) of
23 subdivision (b) of Section 65583 shall be used to identify sites
24 that can be developed for housing within the planning period and
25 that are sufficient to provide for the jurisdiction's share of the
26 regional housing need for all income levels pursuant to Section
27 65584. As used in this section, "land suitable for residential
28 development" includes all of the following:

29 (1) Vacant sites zoned for residential use.

30 (2) Vacant sites zoned for nonresidential use that allows
31 residential development.

32 (3) Residentially zoned sites that are capable of being
33 developed at a higher density.

34 (4) Sites zoned for nonresidential use that can be redeveloped
35 for, and as necessary, rezoned for, residential use.

36 (b) The inventory of land shall include all of the following:

37 (1) A listing of properties by parcel number or other unique
38 reference.

39 (2) The size of each property listed pursuant to paragraph (1),
40 and the general plan designation and zoning of each property.

1 (3) For nonvacant sites, a description of the existing use of
2 each property.

3 (4) A general description of any environmental constraints to
4 the development of housing within the jurisdiction, the
5 documentation for which has been made available to the
6 jurisdiction. This information need not be identified on a
7 site-specific basis.

8 (5) A general description of existing or planned water, sewer,
9 and other dry utilities supply, including the availability and
10 access to distribution facilities. This information need not be
11 identified on a site-specific basis.

12 (6) Sites identified as available for housing for
13 above-moderate income households in areas not served by public
14 sewer systems. This information need not be identified on a
15 site-specific basis.

16 (7) A map that shows the location of the sites included in the
17 inventory, such as the land use map from the jurisdiction's
18 general plan for reference purposes only.

19 (c) Based on the information provided in subdivision (b), a
20 city or county shall determine whether each site in the inventory
21 can accommodate some portion of its share of the regional
22 housing need by income level during the planning period, as
23 determined pursuant to Section 65584. The analysis shall
24 determine whether the inventory can provide for a variety of
25 types of housing, including multifamily rental housing,
26 factory-built housing, mobilehomes, housing for agricultural
27 employees, emergency shelters, and transitional housing. The
28 city or county shall determine the number of housing units that
29 can be accommodated on each site as follows:

30 (1) For a site within a housing opportunity plan, the total
31 housing unit capacity on that site shall be based on the
32 established minimum density.

33 (2) For a site not within a housing opportunity plan, if local
34 law or regulations require the development of a site at a
35 minimum density, the total housing unit capacity on that site
36 shall be based on the established minimum density. If the city or
37 county does not adopt a law or regulations requiring the
38 development of a site at a minimum density, then it shall
39 demonstrate how the number of units determined for that site
40 pursuant to this subdivision will be accommodated.

(3) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (4) of subdivision (b) of Section 65583.

(d) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(1) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(2) For unincorporated areas in all nonmetropolitan counties not included in paragraph (1): sites allowing at least 10 units per acre.

(3) For suburban jurisdictions: sites allowing at least 20 units per acre.

(4) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(e) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(f) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of paragraphs (1) and (2) of subdivision (d) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

(g) A jurisdiction is considered metropolitan if the jurisdiction does not meet the requirements for "suburban area" above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction's population is less than 25,000 in which case it is considered suburban.

~~(h) For sites described in paragraph (3) of subdivision (b) the city or county shall specify the additional development potential~~

1 for each site within the planning period and shall provide an
2 explanation of the methodology used to determine the
3 development potential. The methodology shall consider factors
4 including the extent to which existing uses may constitute an
5 impediment to additional residential development, development
6 trends, market conditions, and regulatory or other incentives or
7 standards to encourage additional residential development on
8 these sites.

9 (i) The program required by subparagraphs (A) and (B) of
10 paragraph (1) of subdivision (d) of Section 65583 shall
11 accommodate 100 percent of the need for housing for very low
12 and low-income households allocated pursuant to Section 65584
13 for which site capacity has not been identified in the inventory of
14 sites pursuant to paragraph (3) of subdivision (a) on sites that
15 shall be zoned to permit owner-occupied and rental multifamily
16 residential use by right during the planning period. These sites
17 shall be zoned with minimum density and development standards
18 that permit at least 16 units per site at a density of at least 16
19 units per acre in jurisdictions described in paragraph (1) of
20 subdivision (d) and at least 20 units per acre in jurisdictions
21 described in paragraphs (3) and (4) of subdivision (d). At least 50
22 percent of the very low and low-income housing need shall be
23 accommodated on sites designated for residential use and for
24 which nonresidential uses or mixed uses are not permitted.

25 (j)

26 (h) For purposes of this section and Section 65583, the phrase
27 “use by right” shall mean that the local government’s review of
28 the owner-occupied or multifamily residential use may not
29 require a conditional use permit, planned unit development
30 permit, or other discretionary local government review or
31 approval that would constitute a “project” for purposes of
32 Division 13 (commencing with Section 21100) of the Public
33 Resources Code. Any subdivision of the sites shall be subject to
34 all laws, including, but not limited to, the local government
35 ordinance implementing the Subdivision Map Act. A local
36 ordinance may provide that “use by right” does not exempt the
37 use from design review. However, that design review shall not
38 constitute a “project” for purposes of Division 13 (commencing
39 with Section 21100) of the Public Resources Code. Use by right

1 for all rental multifamily residential housing shall be provided in
2 accordance with subdivision (f) of Section 65589.5.

3 SEC. 11. Section 65584 of the Government Code is amended
4 to read:

5 65584. (a) (1) For the next revision of the housing element
6 pursuant to Section 65588, and each revision thereafter, each
7 local government shall amend its general plan to accommodate
8 its share of the regional housing need determined pursuant to this
9 section and Section 65584.01, and to ensure each local
10 government is responsible for at least planning to take care of its
11 own. Amendment of the general plan for this purpose shall
12 include the housing and land use elements in particular, and shall
13 designate sufficient land for residential use with capacity for
14 development of housing adequate to accommodate projected
15 population and employment growth for a period of 20 years and
16 to accommodate a projected need for housing development for
17 not less than 10 years within a housing opportunity *plan*. For
18 purposes of subdivision (b) of Section 65583, the share of a city
19 or county of the regional housing need shall include that share of
20 the housing need of persons at all income levels within the area
21 significantly affected by the general plan of the city or county.

22 (2) While it is the intent of the Legislature that cities, counties,
23 and cities and counties should undertake all necessary actions to
24 encourage, promote, and facilitate the development of housing to
25 accommodate the entire regional housing need, it is recognized,
26 however, that future housing production may not equal the
27 regional housing need established for planning purposes.

28 (b) The share of the regional housing needs for the cities and
29 counties within each region shall be set forth in a regional
30 housing needs allocation plan adopted by the appropriate council
31 of governments. The total regional housing need for each region
32 shall be subject to the review process established by Section
33 65584.01. Each council of governments, in consultation with its
34 local government members, shall determine each region's
35 existing and projected housing need pursuant to Section
36 65584.01 at least two years prior to the scheduled revision
37 required pursuant to Section 65588. The appropriate council of
38 governments, or for cities and counties without a council of
39 governments, the department, shall adopt a final regional housing
40 need plan that allocates a share of the regional housing need to

1 each city, county, or city and county at least one year prior to the
2 scheduled revision for the region required by Section 65588. The
3 allocation plan prepared by a council of governments shall be
4 prepared pursuant to Sections 65584.04 and 65584.05 with the
5 advice of the department.

6 (c) Notwithstanding any other provision of law, the due dates
7 for the determinations of the department or for the councils of
8 governments, respectively, regarding the regional housing need
9 may be extended by the department by not more than 60 days if
10 the extension will enable access to more recent critical
11 population or housing data from a pending or recent release of
12 the United States Census Bureau or the Department of Finance. If
13 the due date for the determination of the department or the
14 council of governments is extended for this reason, the
15 department shall extend the corresponding housing element
16 revision deadline pursuant to Section 65588 by not more than 60
17 days.

18 (d) The regional housing needs allocation plan shall be
19 developed using a transparent planning process that ensures
20 opportunity for public participation and adequate notice of
21 determination of projected housing need. To promote higher
22 density development and satisfy the need for zoning sufficient
23 land to accommodate the housing needs of very low, low-, and
24 moderate-income households, the regional housing needs
25 allocation plan shall require that at least 40 percent of the site
26 capacity identified to address the region's overall 10-year
27 housing need ~~to~~ shall be accommodated on sites zoned to allow a
28 specified minimum number of units per acre as identified in
29 subdivision (d) of Section 65583.2. The council of governments
30 shall determine and allocate each individual jurisdiction's share
31 of this requirement.

32 (e) The regional housing needs allocation plan shall be
33 consistent with all of the following objectives:

34 (1) Increasing the housing supply and the mix of housing
35 types, tenure, and affordability in all cities and counties within
36 the region in an equitable manner, which shall result in each
37 jurisdiction receiving an allocation of units for low and very low
38 income households.

1 (2) Promoting infill development and socioeconomic equity,
2 the protection of environmental and agricultural resources, and
3 the encouragement of efficient development patterns.

4 (3) Promoting an improved intraregional relationship between
5 jobs and housing.

6 (4) Establishing an obligation that each local government at
7 least plan to take care of its own, as defined in subdivision (g) of
8 Section 65582.

9 (5) Allocating a lower proportion of housing need to an
10 income category when a jurisdiction already has a
11 disproportionately high share of households in that income
12 category, as compared to the countywide distribution of
13 households in that category from the most recent decennial
14 United States census.

15 (f) The regional housing need shall accommodate projected
16 population and employment growth for a period of 10 and 20
17 years. For the first 10 years, commencing January 1, 2007, job
18 projections may not be reduced for any local government from
19 the most recent local and regional plan or report. The regional
20 housing needs allocation process shall establish mechanisms to
21 allow interjurisdictional agreements to transfer obligations for
22 accommodating regional housing needs between neighboring
23 jurisdictions.

24 (g) The regional housing needs established by this section and
25 Section 65584.01 shall constitute the minimum housing need for
26 the planning period. However, nothing in this section shall be
27 construed to prohibit a local government from planning to
28 accommodate more housing and jobs consistent with other
29 planning goals and objectives.

30 (h) For purposes of this section, “household income levels” are
31 as determined by the department as of the most recent decennial
32 census pursuant to the following code sections:

33 (1) Very low incomes, as defined by Section 50105 of the
34 Health and Safety Code.

35 (2) Lower incomes, as defined by Section 50079.5 of the
36 Health and Safety Code.

37 (3) Moderate incomes, as defined by Section 50093 of the
38 Health and Safety Code.

39 (4) Above moderate incomes are those exceeding the moderate
40 income level of Section 50093 of the Health and Safety Code.

1 (i) Notwithstanding any other provision of law, determinations
2 made by the department, a council of governments, or a city or
3 county pursuant to this section or Section 65584.01, 65584.02,
4 65584.03, 65584.04, 65584.05, 65584.06, or 65584.07 are
5 exempt from the California Environmental Quality Act (Division
6 13 (commencing with Section 21000) of the Public Resources
7 Code).

8 SEC. 12. Section 65584.01 of the Government Code is
9 amended to read:

10 65584.01. (a) For the next revision of the housing element
11 pursuant to Section 65588, each council of governments and the
12 department, for regions without a council of governments, shall
13 determine the existing and projected need for housing for each
14 region in the following manner:

15 (b) The council of governments' determination shall be based
16 upon population projections produced by the Department of
17 Finance and regional population forecasts used in preparing its
18 regional transportation plans. The council of governments shall
19 submit its population forecast to a demographic data review
20 panel that shall consist of representatives of the Department of
21 Finance, the department, the Governor's Office of Planning and
22 Research, and the Employment Development Department for
23 review and comment. If, after taking into consideration the
24 comments of the demographic data review panel, the total
25 regional population forecast for the planning period, developed
26 by the council of governments ~~and used for the preparation of the~~
27 ~~regional transportation plan~~, is within a range of 4 percent of the
28 total regional population forecast for the planning period over the
29 same time period by the Department of Finance, then the
30 population forecast developed by the council of governments
31 shall be the basis from which the existing and projected need for
32 housing in the region is determined. If the difference between the
33 total population growth projected by the council of governments
34 and the total population growth projected for the region by the
35 Department of Finance is greater than 4 percent, then the
36 demographic data review panel and the council of governments
37 shall meet to discuss variances in methodology used for
38 population projections and seek agreement on a population
39 projection for the region to be used as a basis for determining the
40 existing and projected housing need for the region. If no

1 agreement is reached, then the population projection for the
2 region shall be the population projection for the region prepared
3 by the Department of Finance as may be modified by the
4 department as a result of discussions with the council of
5 governments.

6 (c) (1) At least 26 months prior to the scheduled revision
7 pursuant to Section 65588 and prior to developing the existing
8 and projected housing need for a region, each council of
9 governments shall meet and consult with the department
10 regarding the assumptions and methodology to be used to
11 determine the region's existing and projected housing needs. The
12 council of governments shall provide data assumptions proposed
13 to be used for the council's projections of the total regional
14 housing need, including, if available, the following data for the
15 region:

16 (A) Anticipated household growth associated with projected
17 population increases.

18 (B) Household size data and trends in household size.

19 (C) The rate of household formation, or headship rates, based
20 on age, gender, ethnicity, or other established demographic
21 measures.

22 (D) The vacancy rates in existing housing stock, and the
23 vacancy rates for healthy housing market functioning and
24 regional mobility, as well as housing replacement needs.

25 (E) Other characteristics of the composition of the projected
26 population.

27 (2) After consultation with the department, the council of
28 governments shall make determinations in writing on the
29 assumptions for each of the factors listed in subparagraphs (A) to
30 (E), inclusive, of paragraph (1) and the methodology it shall use
31 and shall provide these determinations to the department.

32 (d) (1) The council of governments shall make a
33 determination of the region's existing and projected housing need
34 based upon the assumptions and methodology determined
35 pursuant to subdivision (c). The council of governments shall
36 submit its determination to the department. Within 45 days of the
37 submittal, the department shall provide comments, including any
38 objections, to the council of governments.

39 (2) The objection shall be based on and substantiate either of
40 the following:

1 (A) The council of governments failed to base its
2 determination on the population projection for the region
3 established pursuant to subdivision (b), and shall identify the
4 population projection that the council of governments believes
5 should instead be used for the determination and explain the
6 basis for its rationale.

7 (B) The regional housing need determined by the council of
8 governments is not a reasonable application of the methodology
9 and assumptions determined pursuant to subdivision (c). The
10 objection shall include a proposed alternative determination of
11 the regional housing need based upon the determinations made in
12 subdivision (c), including analysis of why the proposed
13 alternative would be a more reasonable application of the
14 methodology and assumptions determined pursuant to
15 subdivision (c).

16 (3) If the department files an objection pursuant to this
17 subdivision and includes with the objection a proposed
18 alternative determination of its regional housing need, it shall
19 also include documentation of its basis for the alternative
20 determination. Within 45 days of receiving an objection filed
21 pursuant to this section, the council of governments and the
22 department shall meet to attempt to reconcile their differences
23 during a 30-day period. If no agreement is reached, then the
24 matter shall be submitted to arbitration by an academic
25 demographer appointed by the Department of Finance within 30
26 days. The arbitrator shall meet with the parties and within 45
27 days review all relevant data and issue a final housing needs
28 determination for the region that shall carry the presumption of
29 validity in any court action. Any challenge to the determination
30 must be made within 45 days.

31 SEC. 13. Section 65584.02 of the Government Code is
32 amended to read:

33 65584.02. (a) For the fourth and subsequent revisions of the
34 housing element pursuant to Section 65588, the existing and
35 projected need for housing may be determined for each region as
36 follows, as an alternative to the process pursuant to Section
37 65584.01:

38 (1) In a region in which at least one subregion has accepted
39 delegated authority pursuant to Section 65584.03, the region's
40 housing need shall be determined at least 26 months prior to the

1 housing element update deadline pursuant to Section 65588. In a
2 region in which no subregion has accepted delegation pursuant to
3 Section 65584.03, the region's housing need shall be determined
4 at least 24 months prior to the housing element deadline.

5 (2) At least six months prior to the department's determination
6 of regional housing need pursuant to paragraph (1), a council of
7 governments may request the use of population and household
8 forecast assumptions used in the regional transportation plan. For
9 a housing element update due date pursuant to Section 65588 that
10 is prior to January 2007, the department may approve a request
11 that is submitted prior to December 31, 2004, notwithstanding
12 the deadline in this paragraph. This request shall include all of
13 the following:

14 (A) Proposed data and assumptions for factors contributing to
15 housing need beyond household growth identified in the forecast.
16 These factors shall include allowance for vacant or replacement
17 units, and may include other adjustment factors.

18 (B) A proposed planning period that is not longer than the
19 period of time covered by the regional transportation
20 improvement plan or plans of the region pursuant to Section
21 14527, consistent with the 10- and 20-year projections required
22 by Section 65584.

23 (C) A comparison between the population and household
24 assumptions used for the Regional Transportation Plan with
25 population and household estimates and projections of the
26 Department of Finance.

27 The council of governments may include a request to extend
28 the housing element deadline pursuant to Section 65588 to a date
29 not to exceed two years, for the purpose of coordination with the
30 scheduled update of a regional transportation plan pursuant to
31 federal law.

32 (b) The department shall consult with the council of
33 governments regarding requests submitted pursuant to paragraph
34 (2) of subdivision (a). The department may seek advice and
35 consult with the Demographic Research Unit of the Department
36 of Finance, the State Department of Transportation, a
37 representative of a contiguous council of governments, and any
38 other party as deemed necessary. The department may request
39 that the council of governments revise data, assumptions, or
40 methodology to be used for the determination of regional housing

1 need, or may reject the request submitted pursuant to paragraph
2 (2) of subdivision (a). Subsequent to consultation with the
3 council of governments, the department will respond in writing
4 to requests submitted pursuant to paragraph (1) of subdivision
5 (a).

6 (c) If the council of governments does not submit a request
7 pursuant to subdivision (a), or if the department rejects the
8 request of the council of governments, the determination for the
9 region shall be made pursuant to Sections 65584 and 65584.01.

10 SEC. 14. Section 65584.04 of the Government Code is
11 amended to read:

12 65584.04. (a) At least two years prior to a scheduled revision
13 required by Section 65588, each council of governments, or
14 delegate subregion as applicable, shall develop a proposed
15 methodology for distributing the existing and projected regional
16 housing need to cities, counties, and cities and counties within
17 the region or within the subregion, where applicable pursuant to
18 this section. The methodology shall be consistent with the
19 objectives listed in subdivision (e) of Section 65584.

20 (b) (1) No more than six months prior to the development of a
21 proposed methodology for distributing the existing and projected
22 housing need, each council of governments shall survey each of
23 its member jurisdictions to request, at a minimum, information
24 regarding the factors listed in subdivision (d) that will allow the
25 development of a methodology based upon the factors
26 established in subdivision (d).

27 (2) The council of governments shall seek to obtain the
28 information in a manner and format that is comparable
29 throughout the region and utilize readily available data to the
30 extent possible.

31 (3) The information provided by a local government pursuant
32 to this section shall be used, to the extent possible, by the council
33 of governments, or delegate subregion as applicable, as source
34 information for the methodology developed pursuant to this
35 section. The survey shall state that none of the information
36 received may be used as a basis for reducing the total housing
37 need established for the region pursuant to Section 65584.01.

38 (4) If the council of governments fails to conduct a survey
39 pursuant to this subdivision, a city, county, or city and county
40 may submit information related to the items listed in subdivision

1 (d) prior to the public comment period provided for in
2 subdivision (c).

3 (c) Public participation and access shall be required in the
4 development of the methodology and in the process of drafting
5 and adoption of the allocation of the regional housing needs.
6 Participation by organizations other than local jurisdictions and
7 councils of governments shall be solicited in a diligent effort to
8 achieve public participation of all economic segments of the
9 community. The proposed methodology, along with any relevant
10 underlying data and assumptions, and an explanation of how
11 information about local government conditions gathered pursuant
12 to subdivision (b) has been used to develop the proposed
13 methodology, and how each of the factors listed in subdivision
14 (d) is incorporated into the methodology, shall be distributed to
15 all cities, counties, any subregions, and members of the public
16 who have made a written request for the proposed methodology.
17 The council of governments, or delegate subregion, as applicable,
18 shall conduct at least one public hearing to receive oral and
19 written comments on the proposed methodology.

20 (d) To the extent that sufficient data is available from local
21 governments pursuant to subdivision (b) or other sources, each
22 council of governments, or delegate subregion as applicable,
23 shall include the following factors to develop the methodology
24 that allocates regional housing needs:

25 (1) Sufficient for each member jurisdiction to be responsible
26 for accommodating at least its own natural population increases
27 and job generation.

28 (2) Each member jurisdiction's existing and projected jobs and
29 housing relationship.

30 (3) The opportunities and constraints to development of
31 additional housing in each member jurisdiction, including all of
32 the following:

33 (A) Lack of capacity for sewer or water service due to federal
34 or state laws, regulations or regulatory actions, or supply and
35 distribution decisions made by a sewer or water service provider
36 other than the local jurisdiction that preclude the jurisdiction
37 from providing necessary infrastructure for additional
38 development during the planning period.

39 (B) The availability of land suitable for urban development or
40 for conversion to residential use, the availability of underutilized

1 land, and opportunities for infill development and increased
2 residential densities. The council of governments may not limit
3 its consideration of suitable housing sites or land suitable for
4 urban development to existing zoning ordinances and land use
5 restrictions of a locality, but shall consider the potential for
6 increased residential development under alternative zoning
7 ordinances and land use restrictions.

8 (C) Lands preserved or protected from urban development
9 under existing federal or state programs, or both, designed to
10 protect open space, farmland, environmental habitats, and natural
11 resources on a long-term basis.

12 (D) County policies to preserve prime agricultural land, as
13 defined pursuant to Section 56064, within an unincorporated
14 area.

15 (4) The distribution of household growth assumed for
16 purposes of a comparable period of regional transportation plans
17 and opportunities to maximize the use of public transportation
18 and existing transportation infrastructure.

19 (5) The market demand for housing.

20 (6) Agreements between a county and cities in a county to
21 direct growth toward incorporated areas of the county.

22 (7) The loss of units contained in assisted housing
23 developments, as defined in paragraph (7) of subdivision (b) of
24 Section 65583, that changed to non-low-income use through
25 mortgage prepayment, subsidy contract expirations, or
26 termination of use restrictions.

27 (8) High housing costs burdens.

28 (9) The housing needs of farmworkers.

29 (10) Adopted spheres of influence for each city and county in
30 the region.

31 (11) Local agency formation commission policies relating to
32 logical and orderly growth patterns in the region.

33 ~~(11)~~

34 (12) Any other factors adopted by the council of governments.

35 (e) The council of governments, or delegate subregion, as
36 applicable, shall explain in writing how each of the factors
37 described in subdivision (d) was incorporated into the
38 methodology and how the methodology is consistent with
39 subdivision (e) of Section 65584. The methodology may include
40 numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

SEC. 15. Section 65584.07 of the Government Code is amended to read:

65584.07. (a) During the period between adoption of a final regional housing needs allocation until the due date of the housing element update pursuant to Section 65588, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a city or county if all of the following conditions are met:

(1) One or more local governments within a county or housing market area agree to increase its share or their shares in an amount equivalent to the reduction, so that the total regional housing need is maintained.

(2) The transfer of shares shall only occur between local governments within the same county or housing market area.

(3) The council of governments or the department, whichever assigned the county's share, shall approve the proposed

1 reduction, if the proposed transfer request demonstrates that the
2 conditions set forth in paragraphs (1) and (2) have been satisfied.
3 The council of governments shall submit a copy of its decision
4 regarding the proposed reduction to the department prior to the
5 execution of any transfer of shares.

6 (b) The county and cities that have executed transfers of
7 regional housing need pursuant to this section shall amend their
8 housing elements and submit them to the department for review
9 pursuant to Section 65585.

10 All materials and data used to justify any revision shall be
11 made available upon request to any interested party within seven
12 days upon payment of reasonable costs of reproduction unless the
13 costs are waived due to economic hardship. A fee may be
14 charged to interested parties for any additional costs caused by
15 the amendments made to former subdivision (c) of Section 65584
16 that reduced from 45 to 7 days the time within which materials
17 and data were required to be made available to interested parties.

18 (c) In the event an incorporation of a new city occurs after the
19 council of governments, or the department for areas with no
20 council of governments, has made its final allocation under this
21 section, the city and county may reach a mutually acceptable
22 agreement on a revised determination and report the revision to
23 the council of governments and the department, or to the
24 department for areas with no council of governments. If the
25 affected parties cannot reach a mutually acceptable agreement,
26 then either party may request the council of governments, or the
27 department for areas with no council of governments, to consider
28 the facts, data, and methodology presented by both parties and
29 make the revised determination.

30 The revised determination shall be made within one year of the
31 incorporation of the new city based upon the methodology
32 described in subdivision (a) and shall reallocate a portion of the
33 affected county's share of regional housing needs to the new city.
34 The revised determination shall neither reduce the total regional
35 housing needs nor change the previous allocation of the regional
36 housing needs assigned by the council of governments or the
37 department for areas with no council of governments, to other
38 cities within the affected county.

39 SEC. 16. Section 65588 of the Government Code is repealed.

SEC. 17. Section 65588 is added to the Government Code, to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate the following:

(1) The effectiveness of the element including a review of the results of goals, objectives, policies, and programs from the prior planning period and an analysis of any difference between what was planned from the prior planning period and what was actually achieved.

(2) The appropriateness of the goals, objectives, and policies and programs of the updated element based on the analysis of the review of the results of the prior planning period. The goals, objectives, policies, and programs of the element should be revised to reflect the results of this review.

(b) The housing element shall be comprehensively updated every 10 years to, among other things, reflect the results of this periodic review and to incorporate the projected housing need. The land inventory and analyses of constraints shall be reviewed and updated every five years. The housing opportunity plan shall be reviewed and updated every five years as provided in Article 9 (commencing with Section 65470). The land use element and other relevant portions of the general plan shall be revised as necessary to maintain consistency with the housing element.

(c) Notwithstanding subdivision (b) or the date of adoption of the housing element previously in existence, the date of revisions for the housing element shall be modified as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: ____.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: ____.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: ____.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: ____.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: ____.

(6) All other local governments: ____.

1 (7) Subsequent comprehensive revisions shall be completed
2 not less often than at 10-year intervals following these dates, with
3 update reviews completed every five years.

4 SEC. 18. In connection with enacting the health or safety
5 findings requirements of Article 9 (commencing with Section
6 65470) added to Chapter 4 of Division 1 of Title 7 of the
7 Government Code by Section 7 of this act, the Legislature finds
8 and declares that the Court of Appeal opinion in *Mira*
9 *Development Corporation v. City of San Diego* (1988) 205
10 Cal.App.3d 1201, is inconsistent with the Legislature's intent that
11 (a) the phrase "health or safety" be construed narrowly and (b)
12 that substantial evidenced in support of a health or safety finding
13 be of ponderable legal significance, reasonable in nature,
14 credible, and of solid value in light of all of the evidence in the
15 record.

16 SEC. 19. No reimbursement shall be made pursuant to Part 7
17 (commencing with Section 17500) of Division 4 of Title 2 of the
18 Government Code for costs mandated by the state pursuant to
19 this act. It is recognized, however, that a local agency or school
20 district may pursue any remedies to obtain reimbursement
21 available to it under Part 7 (commencing with Section 17500)
22 and any other provisions of law.